

OPEN MEETING ITEM



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COMMISSIONERS
KRISTIN K. MAYES - Chairman
GARY PIERCE
PAUL NEWMAN
SANDRA D. KENNEDY
BOB STUMP



MICHAEL P. KEARNS
Interim Executive Director

ARIZONA CORPORATION COMMISSION

ORIGINAL

Arizona Corporation Commission
DOCKETED

DATE: APRIL 9, 2009

DOCKET NOS: W-02386A-08-0189

APR - 9 2009

TO ALL PARTIES:

DOCKETED BY	
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Enclosed please find the recommendation of Administrative Law Judge Belinda A. Martin. The recommendation has been filed in the form of an Opinion and Order on:

SUN LEISURE ESTATES UTILITIES COMPANY, INC.
(CC&N)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and thirteen (13) copies of the exceptions with the Commission's Docket Control at the address listed below by **4:00** p.m. on or before:

APRIL 20, 2009

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Open Meeting to be held on:

APRIL 28, 2009 and APRIL 29, 2009

For more information, you may contact Docket Control at (602) 542-3477 or the Hearing Division at (602) 542-4250. For information about the Open Meeting, contact the Executive Director's Office at (602) 542-3931.

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MICHAEL P. KEARNS
INTERIM EXECUTIVE DIRECTOR

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 COMMISSIONERS

3 KRISTIN K. MAYES, Chairman
4 GARY PIERCE
5 PAUL NEWMAN
6 SANDRA D. KENNEDY
7 BOB STUMP

8 IN THE MATTER OF THE APPLICATION OF
9 SUN LEISURE ESTATES UTILITIES COMPANY,
10 INC., FOR A CERTIFICATE OF CONVENIENCE
11 AND NECESSITY TO PROVIDE WATER
12 SERVICE IN YUMA COUNTY, ARIZONA.

DOCKET NO. W-02386A-08-0189

DECISION NO. _____

OPINION AND ORDER

10 DATE OF HEARING: February 24, 2009

11 PLACE OF HEARING: Tucson, Arizona

12 ADMINISTRATIVE LAW JUDGE: Belinda A. Martin

13 APPEARANCES: Jason Y. Moyes, Noble Law Offices, on behalf of Sun
14 Leisure Estates Utilities Company, Inc.; and

15 Kevin Torrey, Staff Attorney, Legal Division, on behalf
16 of the Utilities Division of the Arizona Corporation
17 Commission.

16 **BY THE COMMISSION:**

17 Having considered the entire record herein and being fully advised in the premises, the
18 Arizona Corporation Commission ("Commission") finds, concludes, and orders that:

19 FINDINGS OF FACT

20 Procedural History

21 1. In Decision No. 52398 (August 21, 1981), the Commission granted Sun Leisure
22 Estates Utilities Company, Inc. ("Sun Leisure" or "Company") a Certificate of Convenience and
23 Necessity ("CC&N") to provide water service in an unincorporated portion of Yuma County near the
24 City of Yuma, Arizona.

25 2. On March 5, 2008, Sun Leisure filed with the Commission an application requesting
26 an emergency surcharge of approximately \$450 per customer in order to drill a new well and install a
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1 new pump to back up and secure the water supply ("Emergency Surcharge Application").¹

2 3. While investigating the Emergency Surcharge Application, the Commission's Utilities
3 Division Staff ("Staff") discovered that the Commission had revoked the Company's CC&N pursuant
4 Decision No. 69179 (December 5, 2006), after Sun Leisure's corporate status had been revoked by
5 the Commission's Corporations Division for failure to file Annual Reports.

6 4. On April 8, 2008, Sun Leisure filed the instant application for a CC&N
7 ("Application").

8 5. On June 13, 2008, in Decision No. 70375, the Commission denied Sun Leisure's
9 Emergency Surcharge Application, finding that an emergency did not exist. The Commission ordered
10 the Company to file within 30 days of the effective date of the Decision evidence of the Company's
11 active corporate status. Sun Leisure was also ordered to file an application for a permanent rate
12 increase within 120 days of the effective date of the Decision.²

13 6. On May 8, May 12, and August 8, 2008, Staff issued Letters of Insufficiency and Data
14 Requests to the Company.
15

16 7. On December 4, 2008, Staff notified the Company that its Application was sufficient
17 pursuant to the Arizona Administrative Code ("A.A.C.").

18 8. On December 11, 2008, a Procedural Order was issued setting a hearing in this matter
19 for February 24, 2009, and establishing deadlines.
20

21 9. On February 3, 2009, pursuant to the Procedural Order, the Company filed
22 correspondence noting that it had published and mailed notice of the hearing and posted the notice at
23

24 ¹ The basis for the Company's Emergency Rate Application was that one of the Company's two wells failed, leaving the
25 community with just one operating well. Sun Leisure became concerned when seismic activity occurred in the area; the
26 Company was fearful that an earthquake could cause the remaining well to fail. At hearing on the instant matter, the
Company testified that, to date, there have been no production issues with the remaining well. (Transcript, at 11.)

27 ² The requirement that the Company file for a permanent rate increase within 120 days of the effective date of the
28 Decision was modified by Decision No. 70692 (January 20, 2009). The Company's rate application must be filed by July
31, 2009.

1 the community clubhouse.

2 10. On February 3, 2009, Staff filed its Staff Report in this matter, recommending
3 approval of the Application subject to certain conditions.

4 11. On February 24, 2009, a hearing was held at the Commission's Tucson offices before
5 a duly authorized Administrative Law Judge. No members of the public appeared to provide
6 comment.

7 **Corporate Status**

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9 12. Sun Leisure is an Arizona non-profit corporation owned and operated by the members
10 of the Sun Leisure Estates Homeowners Association ("HOA"), also an Arizona non-profit
11 corporation, comprised of lot owners in the Sun Leisure Estates Subdivision. The Company's Board
12 of Directors' terms are staggered and directors are elected each year from homeowners in the HOA.
13 Although the Company's structure does not change, ownership of the Company changes each time a
14 homeowner sells their property to another individual.

15
16 13. In the Staff Report, Staff noted that, in response to its inquiry about Sun Leisure's past
17 non-compliance issues resulting in the revocation of its CC&N, the Company explained that up until
18 2002, it employed Roger Thompson as its CPA. Mr. Thompson handled association fees and
19 expenses, Company billings and expenses, and he also served as Sun Leisure's statutory agent. When
20 Mr. Thompson passed away in 2002, Sun Leisure retained a property management company, Crites
21 and Associates, to assist the Company's Board in handling Sun Leisure's finances.

22
23 14. According to the Staff Report, Diana Crites of Crites and Associates asserted that both
24 the Company and the management company were unaware of the filing delinquencies from the
25 Corporations and Utilities Divisions because all of the correspondence and forms sent by the
26 Commission were mailed to the deceased statutory agent.

27 15. Staff notes that once the matter was brought to Ms. Crites' attention, she submitted the
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1 delinquent annual reports, signed by the current Board members since past Board members no longer
2 lived in the area.

3 16. Staff states that, according to Ms. Crites, the forms were rejected by the Corporations
4 Division since the reports contained signatures of the current Board members, rather than those of
5 past Board members on file with the Commission. Ms. Crites told Staff that there was a proceeding
6 that resulted in a ruling that the forms could be signed by the current Board President. The forms
7 were resubmitted and accepted by the Commission.
8

9 17. On July 10, 2008, pursuant to Decision No. 70375, Sun Leisure filed Certificate of
10 Good Standing dated June 2, 2008, from the Commission's Corporation Division, indicating the
11 Company's active corporate status.

12 18. In Staff's opinion, Sun Leisure did not intentionally fail to comply with Commission
13 rules, regulations and reporting requirements, and concludes that the Company and the current
14 property management company fully understand what is required by the Commission.
15

16 19. Therefore, Staff does not believe it is necessary to impose any fines on Sun Leisure for
17 past compliance failures.

18 **CC&N Application**

19 20. The Company provides service to approximately 57 metered customers in the 55-and-
20 over retirement community.

21 21. Sun Leisure's water system consists of one well producing 130 gallons per minute,
22 one 15,000 gallon storage tank, two booster pumps and a distribution system. According to Staff, the
23 system has adequate capacity to serve its existing customers.
24

25 22. The legal description of Sun Leisure's proposed service area is set forth in Exhibit A
26 attached to this Decision.

27 23. According to the Company, Sun Leisure Estates is fully built-out and cannot expand
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1 because of the military air base to the north of the property.³ All the lots comprising the CC&N area
2 are developed and/or sold and there is no remaining property upon which parks, fountains or other
3 high water use features could be built.⁴

4 24. The Company's current rates were set in Decision No. 57078 (September 19, 1990).
5 Information filed with Staff by the Company indicates that Sun Leisure is able to pay all of its bills
6 with approximately 22 percent of the income going toward reserves for repairs and other
7 miscellaneous expenses.

8 25. Sun Leisure is current on its property taxes.

9 26. Based on compliance information provided by the Company, the Arizona Department
10 of Environmental Quality has determined that Sun Leisure's water system is delivering water that
11 meets water quality standards required by A.A.C., Title 18, and Chapter 4.

12 27. Sun Leisure is not located in an Active Management Area ("AMA") and is not subject
13 to any AMA reporting and conservation requirements. Arizona Department of Water Resources
14 ("ADWR") reported to Staff that ADWR determined that Sun Leisure is currently in compliance with
15 departmental requirements governing water providers and/or community water systems.

16 28. Sun Leisure filed for approval of a curtailment plan tariff and cross connection tariff
17 on January 27, 2009.

18 29. Staff notes that Sun Leisure received a franchise agreement from the Yuma County
19 Board of Supervisors when it was initially certified by the Commission to operate a water system as a
20 non-profit corporation.

21 30. According to Staff, the Utilities Division Compliance Section reported that the
22 Company has no delinquent compliance items.

23 31. Staff recommends that the Commission grant Sun Leisure's application for a CC&N
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28 ³ Transcript, at 11-12.

⁴ Transcript, at 16.

1 to provide water services, subject to the following additional conditions:

- 2 a. That the Commission require Sun Leisure to charge its existing rates and charges
in the Company's certificated area;
- 3 b. That the Commission require Sun Leisure to use the depreciation rates by
4 individual NARUC category, as set forth in Table A of the Engineering Report,
attached to the Staff Report as Exhibit 2;
- 5 c. That the Commission require Sun Leisure to order any new entity that may be
6 retained to replace the current property management company/statutory agent to
7 become familiar with all Commission rules and regulations and to make certain the
appropriate paperwork is filed with the Corporations Division and Utilities
8 Division to change management and contact information.

9 32. Because an allowance for the property tax expense is included in Sun Leisure's rates
10 and will be collected from its customers, the Commission seeks assurances from the Company that
11 any taxes collected from ratepayers have been remitted to the appropriate taxing authority. It has
12 come to the Commission's attention that a number of water companies have been unwilling or unable
13 to fulfill their obligation to pay the taxes that were collected from its ratepayers, some for as many as
14 twenty years. It is reasonable, therefore, that as a preventive measure Sun Leisure shall annually file,
15 as part of its annual report, an affidavit with the Commission's Utilities Division attesting that the
16 company is current in paying its property taxes in Arizona.

17 33. Staff's recommendations, as well as Finding of Fact No. 32, are reasonable and should
18 be adopted.

19 CONCLUSIONS OF LAW

20 1. Sun Leisure is a public service corporation within the meaning of Article XV of the
21 Arizona Constitution and A.R.S. §§40-281 and 40-282.

22 2. The Commission has jurisdiction over Sun Leisure and the subject matter of the
23 Application.

24 3. Notice of the Application was provided in accordance with Arizona law.

25 4. There is a public need and necessity for water service in the proposed service area as
26 set forth in the attached Exhibit A.

27 5. Sun Leisure is a fit and proper entity to receive a Certificate to provide water service
28 in the proposed service area as set forth in the attached Exhibit A.

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IT IS FURTHER ORDERED that Sun Leisure Estates Utilities Company, Inc., shall annually file as part of its annual report, an affidavit with the Utilities Division attesting that it is current on paying its property taxes in Arizona.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

CHAIRMAN

COMMISSIONER

COMMISSIONER

COMMISSIONER

COMMISSIONER

IN WITNESS WHEREOF, I, MICHAEL P. KEARNS, Interim Executive Director of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this _____ day of _____, 2009.

MICHAEL P. KEARNS
INTERIM EXECUTIVE DIRECTOR

DISSENT _____

DISSENT _____

1 SERVICE LIST FOR: SUN LEISURE ESTATES UTILITIES COMPANY, INC.

2 DOCKET NO.: W-02386A-08-0189

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4 Jason Y. Moyes, Esq.
NOBLE LAW OFFICES
1405 West 16th Street, Suite A
5 Yuma, Arizona 85364

6 Janice Alward, Chief Counsel
Legal Division
7 ARIZONA CORPORATION COMMISSION
1200 West Washington Street
8 Phoenix, Arizona 85007

9 Ernest Johnson, Director
Utilities Division
10 ARIZONA CORPORATION COMMISSION
1200 West Washington Street
11 Phoenix, Arizona 85007

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